

STATE OF ALABAMA

MEMORANDUM OF AGREEMENT FOR DIGITAL GOVERNMENT SERVICES

THIS MEMORANDUM OF AGREEMENT is between the Information Services Division of the Department of Finance of the State of Alabama (hereinafter the STATE) and Alabama Interactive, Inc., a for-profit Alabama corporation (hereinafter INTERACTIVE).

RECITALS:

A. The STATE has established a project to provide digital government services for enhanced access to public information and transactions with government for Alabama citizens and others in the most cost-effective, progressive, and cooperative means possible; and

B. The STATE issued An Invitation to Bid (ITB) for digital government services to contract the services of a single application service provider to provide digital government applications and services to agencies, commissions, boards, etc. on a "self-funded" model (hereinafter the ITB); and

C. INTERACTIVE submitted a bid in response to the ITB, and such proposal was determined by the STATE to be the Vendor that best meets the needs of the STATE as the low compliant bidder; and

D. An Award Letter was issued on February 20, 2007 stating the STATE's intent to create a MEMORANDUM OF AGREEMENT (hereinafter the MEMORANDUM OF AGREEMENT) between the STATE and INTERACTIVE to provide the services called for in the ITB and to receive compensation as provided in the ITB; and

E. The parties desire to enter into this MEMORANDUM OF AGREEMENT setting out the details for INTERACTIVE to serve as the single applications services provider to provide Internet based, digital government applications and services hosted on the INTERACTIVE or STATE network, and provided through the State portal www.alabama.gov, and other State of Alabama sites, as agreed herein, (hereinafter "State Digital Government Program") for increased electronic access by Alabama residents, businesses, employees, and other state government agencies and local government ("Customers") to public and other useful and relevant information, as well as to transactions with government; and

F. The State of Alabama portal (hereinafter "State Portal") to be operated, hosted, supported and enhanced by INTERACTIVE as the gateway to the State Digital Government Program is intended to be a significant public access, economic development, governmental efficiency, and educational tool for the State and its residents; and

NOW THEREFORE, in consideration of the mutual promises, terms, and conditions of this MEMORANDUM OF AGREEMENT, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. PURPOSE OF THIS MEMORANDUM OF AGREEMENT. The purpose of this MEMORANDUM OF AGREEMENT is to establish the basis for the operation, hosting, support, continued development and enhancement of digital government between the STATE and INTERACTIVE, and for subsequent Agency Agreements relating to digital government services between INTERACTIVE and other state governmental entities, boards, commissions, departments, agencies, and authorities (hereinafter collectively referred to as "agencies").
2. PURPOSE OF MEMORANDUM OF AGREEMENT. The purpose of the MEMORANDUM OF AGREEMENT may be summarized as follows:
 - 2.1. To create and provide a significant and diligently promoted public service to Alabama residents and businesses as resources permit by:
 - 2.1.1. Increasing the accessibility to information and services made available for enhanced access or through electronic means; and
 - 2.1.2. Promoting economic development by increasing the ease of access to government data and other useful information and by promoting the sharing of that information; and
 - 2.1.3. Promoting government efficiency and citizen convenience through electronic government transactions.
 - 2.2. To provide such public service without increasing the tax burden on the citizens of Alabama, through utilization of private capital and management and appropriate payment for the same from revenues generated through the State Digital Government Program.
3. LIMITATION OF PURPOSE. For the purposes of this MEMORANDUM OF AGREEMENT, INTERACTIVE shall not engage in any business or businesses of digital governmental services for the State of Alabama, or provide any other goods or services to Alabama State governmental agencies unless expressly approved by the STATE in connection with this MEMORANDUM OF AGREEMENT.
4. TERMS OF MEMORANDUM OF AGREEMENT.
 - 4.1. This term of this MEMORANDUM OF AGREEMENT shall be for one 12-month period, commencing March 1, 2007 and expiring at 12:00 A.M., February 28, 2008, unless earlier terminated pursuant to the provisions herein regarding termination; provided, however, that this MEMORANDUM OF AGREEMENT may be extended for a second, third, fourth, and fifth 12-month period with the same pricing, terms and conditions. The second, third, fourth, or fifth 12 month period, if agreed by both parties, would begin the day after the first, second, third, or fourth 12 month period expires.
5. RELATIONSHIP OF PARTIES.
 - 5.1. Except as otherwise expressly provided herein, the parties hereto, in the performance of this MEMORANDUM OF AGREEMENT, will be acting in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The

employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Except as expressly agreed, no party will assume any liability for any injury (including death) to any persons, or any damage to any property arising out of the acts or omissions of the agents, employees, or subcontractors of any other party.

- 5.2. INTERACTIVE is solely liable for all labor and expenses in furtherance of its performance hereunder.
- 5.3. INTERACTIVE may become an agent of the State of Alabama only by the express written authorization of the STATE.
- 5.4. The STATE has designated the State Digital Government Project Manager as its day-to-day manager of the MEMORANDUM OF AGREEMENT for the State. The State Digital Government Project Manager will assist in coordination of pertinent aspects of the e-government services, such as planning and design services, development and integration, etc. The STATE shall from time to time (but in any event within thirty (30) days of such request) provide INTERACTIVE with any specific designation or delegation of a specific person or persons by title, authorized to perform functions under the MEMORANDUM OF AGREEMENT.
- 5.5. INTERACTIVE will designate a full-time General Manager who is the lead contact for INTERACTIVE's services under this MEMORANDUM OF AGREEMENT. The General Manager will meet regularly with the State Digital Government Project Manager to review activities, status of planned services, customer satisfaction and other items relating to the State Digital Government Program. The General Manager will be a full-time resource in the Montgomery, Alabama office of INTERACTIVE.

6. HARDWARE, SOFTWARE AND ACCESS.

INTERACTIVE will provide hardware and provide or develop software as enumerated and described in the INTERACTIVE Proposal and this MEMORANDUM OF AGREEMENT (as defined and described in Section 9.8 below), and such other hardware and software necessary to support the service, information and transactions and to maintain the State Digital Government Program fully operational in accord with this MEMORANDUM OF AGREEMENT and all other agreements between either INTERACTIVE and the STATE or INTERACTIVE and agencies.

- 6.1. With respect to the applications listed on Exhibit A hereto which were deployed in the State Digital Government Program prior to execution of this MEMORANDUM OF AGREEMENT, ("Previously Deployed Applications") INTERACTIVE will grant to the STATE, a perpetual, royalty-free, non-transferable license, which license permits the STATE to: (i) host the object code version of the Previously Deployed Applications in the State Digital Government Program, (ii) make modifications to the Previously Deployed Applications as required for the maintenance and enhancement of the State Digital Government Program, (iii) permit third party contractors who have executed a confidentiality agreement in form satisfactory to INTERACTIVE to make modifications to the Previously Deployed Applications as required for the maintenance and

enhancement of the State Digital Government Program. Such license will be granted "as is" and INTERACTIVE will have no obligation to provide support or modifications for such Previously Deployed Applications unless otherwise agreed in writing.

6.2. In accordance with this MEMORANDUM OF AGREEMENT, upon termination or expiration of each term of this MEMORANDUM OF AGREEMENT, the STATE shall have the option of exercising in connection with all application and State digital government software, documentation and source code related thereto and deployed during that term of this MEMORANDUM OF AGREEMENT, (whether originally developed by INTERACTIVE or one of its affiliated subsidiaries of NIC) (collectively hereinafter "NIC Electronic Commerce Portal Software"), but not software or documentation created by third parties and purchased by INTERACTIVE (hereinafter "Third Party Software"), together with any software updates or upgrades made by INTERACTIVE or one of its affiliated subsidiaries of NIC to NIC Electronic Commerce Portal Software deployed in the State Digital Government Program during that term of the MEMORANDUM OF AGREEMENT (all such NIC Electronic Commerce Portal software, documentation, source code, object code, and updates, but excluding Third Party Software are hereinafter collectively referred to as the "Software"), one or more of the three choices set forth at Section 23.3 of this MEMORANDUM OF AGREEMENT. In connection with any license to the Software elected thereunder, such license shall only be a license to use the Software only in connection with operation of the State Digital Government Program, in perpetuity, with rights to modify the source code and to create derivative works therefrom. Such license will be granted "as is" and INTERACTIVE will have no obligation to provide support or modifications for such NIC Electronic Commerce Portal Software unless otherwise agreed in writing. License rights to Third Party Software used to operate the State Digital Government Program shall be handled in accordance with the STATE's choice among the three choices set forth at section 23.3, and with respect to any transfer of the same pursuant to such choice, shall be transferred to the STATE by INTERACTIVE to the extent permissible under the applicable license terms. Software that is Third Party Software and which is not transferable to the STATE shall be identified and described by INTERACTIVE on a list attached as Exhibit B to this MEMORANDUM OF AGREEMENT or from time to time following utilization of any such new Third Party Software in connection with the State Digital Government Program.

6.3. The Software shall be delivered to the STATE as required under Subparagraph 6.2 under such license no later than the effective date of the termination or expiration of this Agreement, or as otherwise mutually agreed to by the parties.

6.4. After any transfer of the Software under license as identified in Subparagraph 6.2, the STATE shall have the right to make additional modifications, upgrades, and enhancements to the Software, or to purchase or otherwise acquire such modifications, upgrades, and enhancements, as the STATE may see fit for the purposes of maintaining and operating the State Digital Government Program.

6.5. INTERACTIVE will be responsible during each term of the MEMORANDUM OF AGREEMENT for keeping, maintaining, and preserving all hardware and software and

records necessary to operate and support the State Digital Government Program. Items of hardware or software loaned to any entity by INTERACTIVE will be maintained as agreed between INTERACTIVE and the affected entity.

- 6.6. INTERACTIVE shall deposit on a quarterly basis the source code for the most recent version of all NIC Electronic Commerce Portal Software (excluding Third Party Software) in escrow with a neutral third party to be mutually chosen by INTERACTIVE and the STATE (the "Source Code") under the terms of an escrow contract satisfactory to the STATE, INTERACTIVE and the Escrow Agent. Over each term of the MEMORANDUM OF AGREEMENT, INTERACTIVE will have the authority to remove superseded Source Code. The Source Code shall be delivered to the STATE by the Escrow Agent in the event (i) INTERACTIVE is declared bankrupt or is the subject of any liquidation or insolvency proceeding which is not dismissed within ninety (90) days; or (ii) INTERACTIVE is required to deliver Source Code as provided in Subparagraph 6.2 above; or (iii) as otherwise provided in the contract with the Escrow Agent.

The parties acknowledge that INTERACTIVE has previously delivered a copy of the software escrow contract between INTERACTIVE and its Escrow Agent to the STATE. INTERACTIVE shall obtain the consent of the STATE in writing to any amendments to such contract, any change in Escrow Agent, or of any replacement or successor escrow arrangements. Except as otherwise provided in the software escrow contract, any changes to the Escrow Agent will only be allowed at the beginning of each new term of the MEMORANDUM OF AGREEMENT, or as otherwise mutually agreed to by the STATE, INTERACTIVE and the Escrow Agent.

The cost of the Source Code escrow shall be borne by INTERACTIVE, and paid out of the State Digital Government Revenue Account as an operating expense. The STATE agrees that the Source Code shall be treated as the Confidential Information of INTERACTIVE notwithstanding termination or expiration of the MEMORANDUM OF AGREEMENT, and that the Source Code may be used only as required in supporting governmental functions of the State Digital Government Program.

- 6.7. The STATE acknowledges that in the event INTERACTIVE provides the State Digital Government Program with access to and use of the NIC proprietary payment engine software and payment processing, which is hosted on a NIC-owned and operated central server, such software will not be included in the perpetual license to Software to be granted to the STATE as provided by this MEMORANDUM OF AGREEMENT.
- 6.8. The STATE shall have the right periodically, but not more frequently than once each year, to receive a copy of the NIC Electronic Commerce Portal Software from the Escrow Agent; load the Source Code on its servers, and execute the NIC Electronic Commerce Portal Software. Said execution of such software shall be for the purpose of 1) testing the readability of the storage media, 2) preparing for the transition to state operations upon MEMORANDUM OF AGREEMENT expiration or termination, (in which case, this request shall be made not more than thirty (30) days from the MEMORANDUM OF

AGREEMENT termination or expiration date, or 3) for assurance that the Source Code held by the Escrow Agent represents the current version of the NIC Electronic Commerce Portal Software at the time the software was deposited with the Escrow Agent. No other use of the Source Code is permitted under this clause, and no disclosure of the Source Code to third parties is permitted. Prior to exercising this right of access to the Source Code, the STATE and INTERACTIVE will enter into an agreement governing the procedures to be followed in requesting the Source Code from the Escrow Agent, returning the Source Code to the Escrow Agent, protecting the Source Code while on the STATE'S possession, the period of time in which the Source Code may be used by the STATE for the purposes provided herein, and other procedural items.

7. NETWORK CONNECTIONS BETWEEN INTERACTIVE AND THE STATE. Costs associated with maintenance of communication links from State facilities to INTERACTIVE facilities for digital government purposes shall be paid as expenses from the State Digital Government Revenue Account. Communication links from state facilities to INTERACTIVE facilities shall be procured under the STATE's contracts for communications services except as otherwise agreed to by the STATE.
8. COVENANT AGAINST LIENS OR ENCUMBRANCES. INTERACTIVE will not pledge or encumber any assets of the STATE or of any other agency of the State in its care, custody or control, or cause or permit any lien to attach to same, without the express written permission of the STATE.
9. AGENCY AGREEMENTS.
 - 9.1. INTERACTIVE, on behalf of the STATE and as directed by the STATE, shall use its reasonable best efforts to negotiate with agencies and to obtain their approval through written sub-servicing agreements (hereinafter, "Agency Agreements") to implement electronic access for the public and electronic transactions with agencies. The STATE shall use its best reasonable efforts to encourage cooperation by agencies with the State Digital Government Program, and shall be a signatory to the Agency Agreements.
 - 9.2. The parties acknowledge that the form of the Agency Agreement has been negotiated and agreed to by the parties. The terms of this MEMORANDUM OF AGREEMENT, and the documents and exhibits incorporated herein by reference, are intended to be incorporated into any Agency Agreement, and the parties shall use best efforts to cause such incorporation. In the event of a conflict between this MEMORANDUM OF AGREEMENT and any Agency Agreement, the terms of this MEMORANDUM OF AGREEMENT are intended to be controlling, unless the STATE grants an express written waiver allowing the Agency Agreement to deviate from this MEMORANDUM OF AGREEMENT. All Agency Agreements shall be co-terminus with each MEMORANDUM OF AGREEMENT term.
 - 9.3. All terms and conditions of implementing electronic access through the State Digital Government Program for agencies shall be set forth in such Agency Agreements.

- 9.4. Each Agency Agreement shall address the following issues, as necessary and appropriate in each case:
- 9.4.1. Procedures for the handling of any Statutory Fees (as defined below) that the agency is permitted to charge, including whether or not such fees will be collected by INTERACTIVE (as an agent or otherwise), utilized to pay INTERACTIVE expenses, paid pursuant to Subparagraph 9.5 below from the Digital Government Revenue Account (including the time period/cycle and means by which agencies will be paid from the Digital Government Revenue Account, if applicable) and any other terms or conditions relating to said Statutory Fees.
- 9.4.2. The establishment of any Enhanced Access Fees (as defined below) that will be implemented by the State Digital Government Program consistent with the terms of this MEMORANDUM OF AGREEMENT, and any other terms or conditions relating to said Enhanced Access Fees.
- "Statutory Fees" are those fees, taxes and assessments established by statute, ordinance, resolution, or other law or regulation (excluding Enhanced Access Fees), charged by any agency of the State to obtain a copy of a record, obtain a license or permit, or otherwise to engage in a transaction with an agency, excluding the portion of such fees, taxes, and assessments, if any, that an agency lawfully agrees to pay INTERACTIVE for end user access to the agency information provided through the State Digital Government Program.
 - "Enhanced Access Fees" include convenience, transaction costs, subscription fees, premium service fees or other electronic delivery charges associated with electronic delivery of a record, or electronic filing of a transaction that are established in connection with the State Digital Government Program and collected through the State Digital Government Program, or otherwise specifically identified in an Agency Agreement as an Enhanced Access Fee. Enhanced Access Fees also includes any amount that an agency lawfully agrees to pay INTERACTIVE for end user access to the agency information provided through the State Digital Government Program.
 - "Total Fees" equal, for any particular electronic record delivery or electronic transaction filing, any applicable Statutory Fees plus any applicable Enhanced Access Fees.
- 9.4.3. The criteria that the agency and INTERACTIVE will utilize for system development, testing, the business and technical application requirements, and acceptance in order to assure the reliability of the application that is part of the State Digital Government Program.
- 9.4.4. The procedures and means for protection of data and applications residing on the INTERACTIVE servers.
- 9.4.5. A project work plan.

- 9.4.6. A schedule of important dates of events.
- 9.4.7. Specific confidentiality and privacy requirements.
- 9.4.8. The type and content of management and financial reports to be delivered.
- 9.4.9. Training.
- 9.4.10. A marketing plan.
- 9.4.11. Application performance criteria.
- 9.4.12. The agency's rights of termination.
- 9.4.13. Any other reasonable special requirement to successfully implement and operate electronic access to the agency's data.
- 9.5. Agency Agreements shall provide for the payment of any Statutory Fees to depositories designated by the agencies on a basis agreed between INTERACTIVE and the agency. All Fees shall be deposited into and disbursed from the State Digital Government Revenue Account (as defined in, and to be used in accordance with, Paragraph 11 below).
- 9.6. INTERACTIVE shall present the proposed Agency Agreement to the STATE for its review. At the same time, INTERACTIVE shall also present to the STATE a recommendation for any Enhanced Access Fees to be charged users for the applicable digital government service. INTERACTIVE's recommendation shall be submitted for final approval to the Chief Information Officer of the State or its designee, which approval shall occur as soon as practicable, but no later than sixty (60) days from submission. The agency shall be responsible for obtaining any and all other approvals as may be required under Alabama law and providing evidence of such approvals to the STATE. Approval shall not be unreasonably withheld. As additional services are to be developed for an agency, Letters of Addendum to the Agency Agreement shall be prepared and submitted to the STATE for approval. Only if specifically required in the Agency Agreement, a new application will be tested through a pilot implementation provided by INTERACTIVE, before the application is placed in production. In such event, Enhanced Access fees, if applicable, will be applied when the application is placed in production, and the STATE and the agency will use best efforts to approve the new application within a reasonable time period.
- 9.7. INTERACTIVE shall execute contracts with users desiring monthly or subscription access to records and transactions in digital format, provided however that any special provisions for the payment of Statutory or Enhanced Access Fees are consistent with Alabama laws and regulations and approved by the STATE.
- 9.8. ALABAMA DIGITAL GOVERNMENT PROGRAM AND HOSTING
 - 9.8.1. INTERACTIVE will host the State Portal as part of the services provided under the MEMORANDUM OF AGREEMENT. INTERACTIVE and the STATE mutually

undertake to coordinate their efforts in building, maintaining and enhancing the best possible State Portal that incorporates common look and feel, uniform navigation, and consistent policies. INTERACTIVE will use best efforts to meet the performance standards, if any, identified by the STATE and agreed-upon by INTERACTIVE; measurement against such standards, if any, shall exclude unavailability due to scheduled maintenance, and Force Majeure Events (as defined below), and provided further that the provisions of any performance standards and liquidated damages, if any are mutually agreed-upon by the STATE and INTERACTIVE, shall be subject to the limitations of Section 39 of this MEMORANDUM OF AGREEMENT. The STATE retains ownership of www.alabama.gov, and has sole approval authority for all design and development of this official State Portal. INTERACTIVE will provide secondary domain name system service for the alabama.gov and state.al.us domains, and other domains as from time to time requested in writing by the STATE.

- 9.8.2. INTERACTIVE has defined, and the STATE has previously approved the process for digital government service delivery Work Orders..
- 9.8.3. In no event will INTERACTIVE be responsible for delays in performance due to delays beyond the control of INTERACTIVE, including, by way of example and not limitation, delays by third party providers, or in reaching Agency Agreements with the STATE or its agencies, which may include changes in the services provided or the order in which the deliverables are performed.
- 9.8.4. Project status will be reported to the STATE each month. INTERACTIVE will closely monitor the schedule and report any anticipated delays to the STATE at least two (2) weeks prior to the scheduled completion of applications expecting to be delayed and all other task delays as soon as they are suspected regardless of the status of the monthly report.

10. ESTABLISHMENT OF ENHANCED ACCESS FEES.

- 10.1 The initial Enhanced Access Fees shall be determined in accordance with the following table.

Application and Merchant Services

The following table of costs per transaction governs, other than allowed under Section 10.2 of this MEMORANDUM OF AGREEMENT, transaction costs and convenience fees for a combination of digital government transactions and merchant services that are web-based including Interactive Voice Response (IVR):

Monthly Transaction Volume	Transaction Cost	Convenience Fee
0 – 1999	\$4.50	\$4.50
2000 – 3999	\$4.00	\$4.00
4000 – 5999	\$4.00	\$4.00

6000 – 7999	\$4.00	\$4.00
8000 +	\$3.50	\$3.50

The following table of costs per transaction governs, other than allowed under Section 10.2 of this MEMORANDUM OF AGREEMENT, transaction costs and convenience fees for a combination of digital government transactions and merchant services that are web-based only:

Monthly Transaction Volume	Transaction Cost	Convenience Fee
0 – 1999	\$4.00	\$4.00
2000 – 3999	\$3.50	\$3.50
4000 – 5999	\$3.50	\$3.50
6000 – 7999	\$3.50	\$3.50
8000 +	\$3.00	\$3.00

Digital Government Application Services Only

The following table of costs per transaction governs, other than allowed under Section 10.2 of this MEMORANDUM OF AGREEMENT, transaction costs and convenience fees for digital government applications without merchant services that are web-based including Interactive Voice Response (IVR):

Monthly Transaction Volume	Transaction Cost	Convenience Fee
0 – 1999	\$2.50	\$2.50
2000 – 3999	\$2.00	\$2.00
4000 – 5999	\$2.00	\$2.00
6000 – 7999	\$2.00	\$2.00
8000 +	\$2.00	\$2.00

The following table of costs per transaction governs, other than allowed under Section 10.2 of this MEMORANDUM OF AGREEMENT, transaction costs and convenience fees for digital government applications without merchant services that are web-based only:

Monthly Transaction Volume	Transaction Cost	Convenience Fee
0 – 1999	\$2.50	\$2.50
2000 – 3999	\$2.00	\$2.00
4000 – 5999	\$2.00	\$2.00
6000 – 7999	\$2.00	\$2.00
8000 +	\$2.00	\$2.00

Digital Government Merchant Services Only

The following table must be used, other than allowed under Section 10.2 of this MEMORANDUM OF AGREEMENT, to provide per transaction costs and convenience fees based on percentage of the transaction amount for applications that are web-based including Interactive Voice Response (IVR):

Monthly Transaction Amounts	Transaction % Cost	Convenience % Cost
\$0 - 999,999	4.00%	4.00%
\$1,000,000 - \$2,999,999	4.00%	4.00%
\$3,000,000 - \$4,999,999	4.00%	4.00%
\$5,000,000 - \$6,999,999	4.00%	4.00%
\$7,000,000 - \$9,999,999	4.00%	4.00%
\$10,000,000 +	4.00%	4.00%

The following table must be used, other than allowed under Section 10.2 of this MEMORANDUM OF AGREEMENT, to provide per transaction costs and convenience fees based on percentage of the transaction amount for applications that are web-based only:

Monthly Transaction Amounts	Transaction % Cost	Convenience % Cost
\$0 - 999,999	4.00%	4.00%
\$1,000,000 - \$2,999,999	4.00%	4.00%
\$3,000,000 - \$4,999,999	4.00%	4.00%
\$5,000,000 - \$6,999,999	4.00%	4.00%
\$7,000,000 - \$9,999,999	4.00%	4.00%
\$10,000,000 +	4.00%	4.00%

Digital Government Consulting Services

The following table of costs governs, other than allowed under Section 10.2 of this MEMORANDUM OF AGREEMENT, consulting services in the event the STATE or an agency desires to make use of such services.

Classification	Hourly Rate
WEB Designer	\$105.00
WEB Publisher	\$70.00
Advanced WEB Publisher	\$100.00
WEB Programmer/Analyst	\$100.00
Advanced WEB Programmer/Analyst	\$119.00

For purposes of this Section 10, the term "transaction fees" as contained in the ITB means fees paid by or absorbed by the STATE or an agency for access so that the citizen or customer accessing the State Digital Government Program does not incur any charges in excess of Statutory Fees. For purposes of this Section 10, the term "convenience fees" means fees paid by citizens or customers for access to the State Digital Government Program so that the STATE or the agency receiving payment receives the entire amount

of Statutory Fees. Transaction fees and convenience fees are both included in the term "Enhanced Access Fees" as defined in Paragraph 9.4 above.

For purposes of this Section 10, the number of transactions shall be determined on a statewide basis by adding all transactions in a pricing category, e.g., Application and Merchant Services, for all agencies making use of such services during the month.

- 10.2 INTERACTIVE and the STATE may agree on a revised schedule of fees. Particularly, for those e-government services in which a significant statutory fee or payment is made, in order to assure availability of credit card payment without the loss of revenues on such transaction by INTERACTIVE and/or the State Digital Government Program, or for services that may support a higher Enhanced Access Fee, the parties will consider changes in the maximum fees charged.
- 10.3 In establishing revised Enhanced Access Fees, the STATE and INTERACTIVE shall consider the following factors:
 - 10.3.1 The entrepreneurial and start-up nature of the business and attendant risk of capital for INTERACTIVE and the need to earn an acceptable rate of return.
 - 10.3.2 The need to invest in the reasonable expansion of and improvement in digital government services and information services.
 - 10.3.3 The need of INTERACTIVE to earn a reasonable profit from the State Digital Government Program during the MEMORANDUM OF AGREEMENT term, considering in particular any investments or monies advanced by INTERACTIVE in connection with State Digital Government Program development, expansion, and maintenance.
 - 10.3.4 The market research conducted by INTERACTIVE.
 - 10.3.5 The associated merchant fees or other third party costs to be paid in making the services available online.

The following additional factors may be considered:

- 10.3.6 A commitment to the public policy requirement to provide electronic access to public records and electronic transactions at the most reasonable rate possible to encourage adoption.
 - 10.3.7 That the rates to be charged may be adjusted to permit funding of special projects and enhancement of public service.
- 10.4 Enhanced Access Fees (but not Statutory Fees) may be reduced at the discretion of INTERACTIVE on an interim basis not to exceed ninety (90) days, as an inducement to increase usage of digital government services, but any such reduction is subject to review by the STATE. In no event, however, shall INTERACTIVE be entitled to reduce any Statutory Fee.

- 10.5 In the event the Statutory Fees are reduced or increased as result of revisions to Alabama law or regulation, such reductions or increases shall be passed on directly to end users as a decrease or increase in Total Fees.

11 ALABAMA DIGITAL GOVERNMENT PROGRAM REVENUE AND REMUNERATION.

- 11.1 The following provisions shall apply to the recognition and disbursement of all funds received by INTERACTIVE as a result of the operation of the MEMORANDUM OF AGREEMENT, unless otherwise mutually agreed to by the parties hereto in writing:
- 11.2 INTERACTIVE shall receive Statutory and Enhanced Access Fees charged for electronic access to records and for transactions through the State Digital Government Program, and deposit them in a State Digital Government Revenue Account ("Revenue Account") in INTERACTIVE's name, opened in an in-state branch of a nationally chartered bank approved as a state funds depository bank by the State Treasurer. Additionally, any hourly fees for digital government consulting services paid by state agencies to INTERACTIVE will be deposited in the Revenue Account.
- 11.3 INTERACTIVE shall pay first out of the Revenue Account, to the STATE or agencies, as applicable, all Statutory Fees actually collected through the State Digital Government Program as provided in the respective Agency Agreements. INTERACTIVE does not guarantee collection of Statutory and Enhanced Access fees.
- 11.4 INTERACTIVE shall next pay from the Revenue Account all State Digital Government Program operating expenses.
- 11.5 INTERACTIVE will be entitled to retain any sums remaining after payment of the amounts in sections 11.1 through 11.4 above as its fee.
- 11.6 INTERACTIVE shall, annually, allocate to the STATE without additional charge, up to the equivalent of \$50,000 of digital government consulting services (in accordance with the consulting rates above), to be used as approved by the STATE, for development by INTERACTIVE of applications for the State Digital Government Program which are deemed to be good for Alabama but have no revenue stream associated with them ("Service Credits"). During the MEMORANDUM OF AGREEMENT term, any Service Credits remaining at the end of a year shall be carried forward to the next year, if applicable. Any Service Credits remaining at the end of a MEMORANDUM OF AGREEMENT term, or upon any earlier termination of this MEMORANDUM OF AGREEMENT, shall be deemed to be expired. The Service Credit shall be pro-rated for any partial year. Because revenues from Enhanced Access fees are used for the operation and improvement of the State Digital Government Program as set out in this section, and in the State Digital Government Program annual budget, provisions for revenue sharing will not be required other than through the Service Credits defined by this section. The STATE and INTERACTIVE may from time to time agree to allocate a portion of the Service Credit towards e-government specific solutions, excluding hardware; (provided

however, that the portion so allocated shall not exceed 50% of the Service Credit). in which case in lieu of consulting services, INTERACTIVE will make the mutually agreed to purchase(s).

- 11.7 Under no circumstances shall the commitment under this MEMORANDUM OF AGREEMENT constitute a debt of the State of Alabama as prohibited by Section 213, Constitution of Alabama, 1901, as amended by Amendment 26.
- 12 DISASTER RECOVERY. INTERACTIVE has established and maintains a written disaster recovery plan (hereafter, "DRP"), which has been previously provided to and accepted by the STATE. INTERACTIVE will provide the STATE with copies of all substantial modifications to its DRP as they occur.
- 13 CHANGES IN STATE DIGITAL GOVERNMENT PROGRAM. INTERACTIVE may not make a planned material change in the State Digital Government Program operations without the prior written consent of the STATE. A "planned material change" includes, but is not limited to, a change that increases the time required to respond to inquiries, or that adds to the complexity of system use, diminishes services provided to users, or results in a comparable impact on operations noticeable by users, and which is not required to be executed on an immediate or emergency basis. INTERACTIVE will provide to the STATE at least thirty (30) days' prior written notice of a planned material change in State Digital Government Program operations.
- 14 NOTICES.
 - 14.1 The Chief Information Officer is designated as the person to receive legal notices hereunder on behalf of the STATE.
 - 14.2 The President of INTERACTIVE is designated by INTERACTIVE as the person to receive legal notices hereunder on behalf of INTERACTIVE at the record address for INTERACTIVE, with a copy to NIC, Inc. 10540 South Ridgeview Road, Olathe, Kansas 66061, attention General Counsel.
 - 14.3 Each party may change its designation for notice by written notice to the other party.
 - 14.4 Notices by the parties to one another shall be given in writing to the persons identified above or to such other persons as may be subsequently identified in a written notice. Such notices shall be effective on the date of mailing or transmission if sent by U.S. first-class restricted delivery mail, postpaid, return receipt requested, or by any reputable overnight delivery service, prepaid, or by facsimile transmission or electronic mail if proof of transmission is retained. However, notices pertaining to legal matters including, but not necessarily limited to, termination, default or liability, shall be sent in compliance with applicable law and via prepaid, certified mail, return receipt requested.
- 15 CONFIDENTIALITY OF INFORMATION; BOOKS AND RECORDS. The parties hereto acknowledge that the STATE and the agencies are subject to the Alabama Access to Public Records Act, § 36-12-40 et seq., Code of Alabama (1975) (the "Public Records Act"), which provides generally that records relating to a public agency's business are open to public

inspection and copying unless exempted under the Public Records Act. Subject to the foregoing, the STATE will use its reasonable best efforts to treat information received from INTERACTIVE as confidential and comply with the provisions of this Section 15 where (A) INTERACTIVE specifically advises the STATE that it desires such information be kept confidential and (B) such information falls within an exemption under the Public Records Act. The STATE will not be deemed to be in violation of this MEMORANDUM OF AGREEMENT if it discloses or makes available to the public any information regarding the State Digital Government Program as and to the extent such disclosure is required pursuant to or under the Public Records Act.

- 15.1 For purposes of this Paragraph 15, a "trade secret" is defined as information which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertained by proper means by, other persons who can obtain economic value from its disclosure or use.
- 15.2 For purposes of this Paragraph 15, "confidential or proprietary information" shall consist of the following:
 - 15.2.1 All books, records, documents, and electronic files that pertain to INTERACTIVE's business or operation or to that of its corporate parent, affiliate, or subsidiary (as contrasted to INTERACTIVE's operation of the State Digital Government Program) and all Source Code for the Software and the Previously Deployed Applications, unless disclosed publicly by INTERACTIVE or its corporate parent, affiliate or subsidiary.
 - 15.2.2 All State Digital Government Program customer and user information that contains separately identifiable personal financial and subscriber information.
 - 15.2.3 Any and all records maintained by any agency or the STATE that are not deemed "public" under the Public Records Act by virtue of falling into one of the exceptions to the definition of public record.
- 15.3 When INTERACTIVE furnishes or discloses information produced or generated by INTERACTIVE, deemed by INTERACTIVE to be confidential, proprietary or trade secret and such information is furnished or disclosed in a tangible form, it shall clearly mark the information in a manner to indicate that it is considered proprietary, confidential, trade secret or otherwise subject to limited distribution as provided herein. To the fullest extent consistent with and permitted by the Public Records Act, the STATE acknowledges that such information constitutes trade secrets and commercial and financial information of INTERACTIVE which is not a public record and is not subject to public access under the Access to Public Records Act.
- 15.4 When INTERACTIVE furnishes or discloses information of INTERACTIVE deemed to be confidential, proprietary, or trade secret in an oral or intangible form, it shall, at the time of disclosure, clearly identify the information as being proprietary, confidential or a trade secret, or otherwise subject to limited distribution as provided herein.

- 15.5 Subject to the requirements of the Public Records Act, the STATE agrees not to disclose or produce for any purpose, including in response to a subpoena or other court or governmental order, without giving INTERACTIVE or its successors, assigns, parents, or subsidiaries as much advance notice as possible, but not less than ten (10) days, and an opportunity to object to the disclosure or production of any of the confidential, proprietary, or trade secret information of INTERACTIVE or its corporate parent, affiliates, and subsidiaries (collectively referred to herein as the "INTERACTIVE Confidential Information"). At the request of the STATE, INTERACTIVE shall provide such reasonable assistance as may be requested by the STATE to comply with this provision.
- 15.6 All other Alabama governmental agencies and personnel shall be subject to the same requirement of confidentiality if INTERACTIVE Confidential Information, marked as confidential, is disclosed to such entity.
- 15.7 Notwithstanding anything to the contrary herein, the STATE may disclose in response to specific requests records pertaining to the operation of the State Digital Government Program that do not contain INTERACTIVE Confidential Information or separately identifiable digital government system customer or user information.
- 15.8 INTERACTIVE acknowledges that all confidential information described in 15.2.3, for which access is made available to INTERACTIVE by the STATE or by any agency, is and remains the confidential property and records of the STATE or the agency. INTERACTIVE agrees that it (i) will not disclose such Confidential Information of any agency of the State to any person or entity unless necessary or appropriate to further the objectives of this MEMORANDUM OF AGREEMENT or otherwise required by law or court order, and (ii) will not distribute, sell or make any use whatsoever of any Confidential Information other than for the purposes expressly described in this MEMORANDUM OF AGREEMENT. If INTERACTIVE makes available or discloses any such State-owned Confidential Information to its corporate parent, affiliates, subsidiaries or any State-approved third-party subcontractor in order to further the objectives of this MEMORANDUM OF AGREEMENT, it shall (A) give reasonable prior notice to the STATE of its intention, and (B) require such party to agree in writing to the confidentiality requirements of this MEMORANDUM OF AGREEMENT.
- 15.9 INTERACTIVE shall keep accurate books, records, and documents related to the operation of the State Digital Government Program and shall make such books and records reasonably available to the State, its auditors, or its agents for inspection and review at any reasonable time. Such accessibility and disclosure will not, by itself, cause any such records that constitute INTERACTIVE Confidential Information to lose their protected status hereunder.
- 15.10 In the event of transition of INTERACTIVE's role under this Agreement to another entity selected by the STATE to be the service provider for the State Digital Government Program, INTERACTIVE shall deliver such records as are necessary for the State Digital Government Program operations to the new service provider selected by the STATE, in accordance with this MEMORANDUM OF AGREEMENT. Any such transfer and

disclosure will not, by itself, cause any such records that constitute INTERACTIVE Confidential Information to lose their protected status hereunder. In the event of any such transition, the INTERACTIVE Confidential Information shall not be disclosed or produced for any purpose, including a subpoena or other court or governmental order, without giving INTERACTIVE or its successors, assigns, parents, or subsidiaries as much advance written notice as possible, up to ten (10) days, and an opportunity to object to the disclosure or production. INTERACTIVE shall be entitled to retain copies of the same.

15.11 Within thirty (30) days after termination or expiration of the MEMORANDUM OF AGREEMENT, INTERACTIVE shall deliver all non-confidential records of the State Digital Government Program to the STATE, and such records shall become the exclusive property of the STATE, if not already owned by the STATE. INTERACTIVE shall be entitled to retain copies of the same.

16 ALABAMA DIGITAL GOVERNMENT PROGRAM PRIVACY POLICY. INTERACTIVE shall post on the State Portal the Alabama specific Digital Government Program Privacy Policy regarding information submitted to or retrieved from the government through the State Digital Government Program. Privacy policies may be amended from time to time by the State, and will be appropriately displayed on agency web pages.

17 FINANCIAL REPORTING AND AUDITS.

17.1 INTERACTIVE will provide to the STATE monthly income statements, cash flow statements and other reports reasonably requested by the STATE for the State Digital Government Program. INTERACTIVE will also provide quarterly financial statements (unaudited, but presented in accordance with Generally Accepted Accounting Practices ("GAAP")) and annual audited financial statements of INTERACTIVE covering revenues of the State Digital Government Program, demonstrating that INTERACTIVE has maintained positive net worth and such additional capital and liquidity as are reasonably adequate for the operation of the State Digital Government Program. In addition, INTERACTIVE will provide to the STATE either (a) a copy of its annual operating audit or (b) a summary of any operating audit findings that affect the State Digital Government Program. A competent and reputable CPA licensed in Alabama and approved by the State Board of Accounts or a national accounting firm will perform any such audit.

17.2 INTERACTIVE also agrees to make changes requested by the STATE to comply with recommendations made in any audit, which changes are reasonably agreed to by both the STATE and INTERACTIVE.

17.3 To the extent the audit report discloses any discrepancies in INTERACTIVE's charges, billings or financial records, and following a period for review and verification of the amount by INTERACTIVE and the STATE, INTERACTIVE will adjust the next regular payment to the STATE as soon as reasonably possible, but not to exceed ninety (90) calendar days. INTERACTIVE shall cooperate to assure that verification is completed in a timely manner.

17.4 The accounting system shall include a numbered chart of accounts, books of original entry of all transactions, appropriate subsidiary ledgers, a general ledger that includes to-date postings and an audit trail through financial statements. Such books may either be maintained on paper or on computer with appropriate backup. INTERACTIVE shall adopt the calendar year ending December 31 for reporting purposes.

18 CONSISTENCY WITH OTHER DOCUMENTS. INTERACTIVE shall conduct all State Digital Government Program operations and development generally in accordance with the terms of this MEMORANDUM OF AGREEMENT and the INTERACTIVE Proposal and in particular in compliance with applicable Agency Agreements and incorporated project plans. As deemed necessary or desirable, INTERACTIVE may depart from such Proposal or agency project plan regarding non-material issues; however, before making any material departure, INTERACTIVE must obtain the approval of the STATE and the affected agency in advance. INTERACTIVE shall timely provide to the STATE all management, financial and operational and reports as the STATE may reasonably request or as are provided for in the Agency Agreement to implement the electronic access.

19 OVERSIGHT OF THE STATE DIGITAL GOVERNMENT PROGRAM.

19.1 The STATE shall have oversight of the State Digital Government Program. Oversight shall include, but not be limited to:

19.1.1 Establishing State Digital Government Program pricing upon recommendation from INTERACTIVE and the agencies, subject to approval by the STATE.

19.1.2 Establishing State Digital Government Program policies, with input from INTERACTIVE.

20 FULL-TIME EQUIVALENT POSITIONS AND SALARIES, BENEFITS AND RELATED EMPLOYER EXPENSES.

20.1 INTERACTIVE employee salaries and wages for each term of this MEMORANDUM OF AGREEMENT shall be consistent with the requirements of applicable state and federal laws. INTERACTIVE will maintain its office in Montgomery, Alabama.

20.2 INTERACTIVE shall be solely and exclusively responsible for the hiring, firing, recruitment, management, and training of its employees. The STATE shall have no involvement in the personnel affairs of INTERACTIVE beyond the disclosure of the names and positions of officers and employees of INTERACTIVE. INTERACTIVE agrees to undertake such background checks and other procedures reasonably requested by the STATE, and to obtain a signed certificate of compliance with Paragraph 33 below, if requested by the STATE. All staff will be required to adhere to and sign applicable state policies related to technology use and security, including a code of ethics. The STATE shall have the right at any time to require that INTERACTIVE remove from interaction with the STATE, INTERACTIVE personnel from the project who the STATE reasonably believes are detrimental to its working relationship with INTERACTIVE on the project. The STATE shall provide INTERACTIVE with notice of its determination.

and the reasons it requests the removal. If the STATE signifies that a potential security violation exists with respect to the request, INTERACTIVE shall immediately remove such individual from the project until it makes its determination as to the validity of the risk; however, INTERACTIVE shall not place the person on the project again without the STATE's consent.

21 DOCUMENTS INCORPORATED BY REFERENCE.

- 21.1 The entire ITB and the INTERACTIVE response are incorporated into this MEMORANDUM OF AGREEMENT by reference and made a part hereof including all Exhibits mentioned in this MEMORANDUM OF AGREEMENT.
- 21.2 In the event of any conflict between the terms of the MEMORANDUM OF AGREEMENT and the provisions of this ITB, the terms of the MEMORANDUM OF AGREEMENT shall control. It is the intention of the parties that any disputes be resolved pursuant to Paragraph 42 below.

22 INSURANCE AND BONDS.

- 22.1 INTERACTIVE shall provide the STATE written evidence of the following:
 - 22.1.1 That INTERACTIVE is an Alabama corporation in good standing, authorized and admitted to do business in the State of Alabama.
 - 22.1.2 That INTERACTIVE is covered by a general comprehensive liability insurance policy in the amount of at least (i) \$1,000,000 bodily injury, \$1,000,000 annual aggregate and property damage coverage of \$300,000; \$300,000 annual aggregate; (ii) automobile liability insurance, combined single limit \$1,000,000 each occurrence bodily injury and property damage, owned vehicles, if automobiles are required in the performance of the MEMORANDUM OF AGREEMENT; (iii) workers' compensation insurance, coverage B \$100,000. The State of Alabama shall be listed as an additional insured.
 - 22.1.3 INTERACTIVE shall have employee crime insurance covering all INTERACTIVE officers and employees in an amount of at least \$500,000 per loss.
- 22.2 INTERACTIVE shall maintain all workers' compensation insurance coverage as required by law.
- 22.3 INTERACTIVE shall not be required to post a performance bond, due to its position as the incumbent and its demonstrated ability to perform the services required under this MEMORANDUM OF AGREEMENT.

23 TERMINATION OF THE MEMORANDUM OF AGREEMENT.

- 23.1 TERMINATION BY THE STATE FOR CAUSE. The STATE shall have the right to terminate any term of the MEMORANDUM OF AGREEMENT for cause, subject to cure, by providing written notice of termination to INTERACTIVE. Such notice shall specify the time, the specific provision of the MEMORANDUM OF AGREEMENT or

“for cause” reason that gives rise to the termination, and, if susceptible to cure, shall specify reasonable appropriate action that can be taken by INTERACTIVE to avoid termination of the MEMORANDUM OF AGREEMENT. The STATE shall provide a specified period of time of up to ninety (90) calendar days, unless otherwise specified in this MEMORANDUM OF AGREEMENT, for INTERACTIVE to cure breaches and deficiencies of its performance obligations under the MEMORANDUM OF AGREEMENT.

23.1.1 For purposes of Subparagraph 23.1, the phrase “for cause” means the following:

- 23.1.1.1 Any material breach or evasion by INTERACTIVE of the terms or conditions of the MEMORANDUM OF AGREEMENT and its amendments, if any.
- 23.1.1.2 Substantial cessation or material degradation of State Digital Government Program services by INTERACTIVE.
- 23.1.1.3 The commission of fraud, misappropriation, embezzlement, malfeasance, significant misfeasance, or similar illegal conduct by INTERACTIVE, its officers, directors or by any corporation or shareholder owning a controlling interest in INTERACTIVE in connection with the MEMORANDUM OF AGREEMENT or which can be expected to have a material adverse effect on the MEMORANDUM OF AGREEMENT.
- 23.1.1.4 Dissolution of INTERACTIVE or any corporation owning a controlling interest in INTERACTIVE or forfeiture of INTERACTIVE’s corporate existence or good standing in Alabama without assignment to a successor acceptable to the STATE, in its sole discretion.
- 23.1.1.5 Intentional or negligent act or omission by INTERACTIVE, its parent, affiliates or any agent within the control of INTERACTIVE resulting in the disclosure of any Confidential Information of the STATE clearly indicated as being confidential.

23.2 TERMINATION BY THE STATE WITHOUT CAUSE.

23.2.1 The STATE may terminate the MEMORANDUM OF AGREEMENT at any time and without cause as follows:

- 23.2.1.1 If required by State law, where the STATE makes a written determination that funds, if any, required to sustain the MEMORANDUM OF AGREEMENT are not appropriated or otherwise available to support continuation of the MEMORANDUM OF AGREEMENT or of an Agency Agreement, the portion of the MEMORANDUM OF AGREEMENT or Agency Agreement supported by such funds shall be immediately cancelled.

23.3 OPTIONS AVAILABLE TO THE STATE UPON TERMINATION OR EXPIRATION OF THE MEMORANDUM OF AGREEMENT. The following options will be available

to the STATE upon termination or expiration of the MEMORANDUM OF AGREEMENT:

- 23.3.1 Obtain a license for the Software from INTERACTIVE (pursuant to the license terms set out in Section 23.3.3.) and contract with INTERACTIVE for ongoing software support upon mutually agreeable terms and conditions; or
- 23.3.2 Select a new services provider by competitive bid or ITB, and elect to have INTERACTIVE support the systems existing at MEMORANDUM OF AGREEMENT termination upon mutually agreeable terms and conditions; or
- 23.3.3 With respect to the Software deployed during the term of this MEMORANDUM OF AGREEMENT, for the State Digital Government Program obtain from INTERACTIVE a perpetual, royalty-free, non-transferable license, which license permits the STATE to: (i) host the object code version of such Software on the State Portal, (ii) make modifications to such Software as required for the maintenance and enhancement of the State Digital Government Program, (iii) permit third party subcontractors who have executed a confidentiality agreement in form satisfactory to INTERACTIVE to make modifications to such Software as required for the maintenance and enhancement of the State Digital Government Program. Such license will be granted "as is" and INTERACTIVE will have no obligation to provide support or modifications for such Software unless otherwise agreed in writing.

23.4 TERMINATION BY INTERACTIVE FOR CAUSE. INTERACTIVE shall have the right to terminate the MEMORANDUM OF AGREEMENT for cause, subject to cure by providing written notice of termination to the STATE. Such notice shall specify the time, the specific provision of the MEMORANDUM OF AGREEMENT or "for cause" reason that gives rise to the termination, and shall specify reasonable appropriate action that can be taken by the STATE to avoid termination of the MEMORANDUM OF AGREEMENT. INTERACTIVE shall provide a specified period of time of up to ninety (90) calendar days, unless otherwise specified in this MEMORANDUM OF AGREEMENT, for the STATE to cure breaches and deficiencies of its performance obligations under the MEMORANDUM OF AGREEMENT. For purposes of Subparagraph 23.4, the phrase "for cause" shall mean:

- 23.4.1 Any material breach or evasion by the STATE or an agency of the terms or conditions of the MEMORANDUM OF AGREEMENT and its amendments, if any.
- 23.4.2 The financial base upon which INTERACTIVE relies for solvent State Digital Government Program operations is removed or substantially diminished after the effective date of the MEMORANDUM OF AGREEMENT. Any election to waive or postpone termination for cause hereunder by INTERACTIVE at any one time shall not bind INTERACTIVE to waive or postpone termination for cause at any time thereafter.

24 CONTINUITY OF SERVICES.

- 24.1 INTERACTIVE recognizes that the services under the MEMORANDUM OF AGREEMENT are very important to the citizens and businesses of the State of Alabama and must be continued without interruption and that, upon MEMORANDUM OF AGREEMENT expiration, a successor, whether an agency of the State or another private entity, may continue them.
- 24.2 Prior to the end of any MEMORANDUM OF AGREEMENT term in which the State has not exercised a renewal right, and at the end of the final renewal term, INTERACTIVE covenants to make an orderly transition of the Digital Government Program and State Portal, and to perform any and all tasks in good faith that are necessary to preserve the integrity of the State Digital Government Program operations. INTERACTIVE shall be entitled to receive the ordinary and usual compensation from the continued operation of the State Digital Government Program during such transition period. If the State Digital Government Program is not profitable to INTERACTIVE at the time of such transition, then INTERACTIVE shall not be required to provide transition cooperation and assistance for longer than ninety (90) days from the date that such transition begins.
- 24.3 INTERACTIVE shall make every reasonable effort to ensure that any such State Digital Government Program transition shall be performed in a professional and businesslike manner, and shall comply with the reasonable requests and requirements of the STATE, agencies, and any successor State Digital Government Program provider, to accomplish a successful, seamless, and unhindered transfer of responsibilities.
- 25 FORCE MAJEURE. In the event that any party is unable to perform any of its obligations under the MEMORANDUM OF AGREEMENT or to enjoy any of its benefits because of (or if failure to perform the services is caused by) natural disaster, actions or decrees of governmental bodies, or other event or failure not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other parties and shall use reasonable efforts to resume performance. Upon receipt of such notice, all obligations under the MEMORANDUM OF AGREEMENT shall be immediately suspended. If the period of nonperformance exceeds sixty (60) calendar days from the receipt of notice of the Force Majeure event, the party whose ability to perform has not been so affected may, by giving written notice, terminate the MEMORANDUM OF AGREEMENT without incurring any liability, liquidated damages or termination charges whatsoever.
- 26 STANDARD USE MESSAGES. If necessary or required by law or if requested by the STATE, INTERACTIVE shall cause the State Portal to display a standard use message upon initial log-on to the State Portal, and each State Portal user shall be required to verify compliance with said message terms. Upon subsequent log-ons, such message may be displayed only, without verification, if prior verification is logged in the user's file. Messages shall state in understandable and clear terms what, if any restriction(s) exist with regard to accessing the information or conducting the transaction, and that the individual accessing the information or conducting the transaction must accept any and all such restriction(s) before proceeding with the authorized access or transaction. Moreover, in addition to any overall messages, the State Portal shall include any language or restriction required by Alabama or Federal law for information

from a particular Agency. The standard use message shall be updated to comply with any amendments to applicable law.

27 AGENCY ACCESS.

- 27.1 Consistent with State policies, all agencies shall have terminal (read) access to the computerized log of State Portal users accessing for-fee agency data and their security status, without access cost to the agency or other agencies or the STATE. The agency will be responsible for the cost of terminal(s) and the cost of a dial-up or lease line, whichever is used.
- 27.2 An agency must be able to sign on to INTERACTIVE's system to audit enhanced access to its for-fee records. On-line audit capability must be available for the length of time specified by the agency after transaction processing. After the on-line retention period has expired, INTERACTIVE shall, as specified between INTERACTIVE and the agency, retain, destroy, or provide the State Portal user log information to the agency without cost. Insofar as these records may be public, INTERACTIVE shall act as directed by the agency in compliance with the Alabama law on retention or access of public records.
- 27.3 At a minimum, the State Digital Government Program shall retain the following data: name of State Digital Government Program for-fee user, transaction data and time, type of inquiry and access keys.
- 27.4 INTERACTIVE shall notify affected agencies and the Chief Information Officer of the STATE of any unauthorized attempt to bypass State Portal security within two (2) hours of detection of such attempt. The notice shall contain detailed information to aid the STATE or any affected agency in examining the matter.

28 PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INDEMNITY.

- 28.1 INTERACTIVE shall indemnify, defend and hold harmless the STATE against any claim that any part of the Software, programming or operation provided by or to be provided by INTERACTIVE, excepting commercial off-the-shelf Third Party Software, infringes a U.S. patent, or a U.S. or international copyright, trade secret or trademark of any person or entity, and INTERACTIVE shall be solely responsible for any resulting costs, damages, and attorney's fees finally awarded.
- 28.2 The STATE shall be provided with prompt notice of any claim of infringement of a U.S. patent, or a U.S. or international copyright, trade secret or trademark, and INTERACTIVE shall have the exclusive right to defend or settle such claim at INTERACTIVE's option except that the STATE shall have the right to participate in the defense and selection of defense counsel when issues of State law or policy are involved. The STATE shall cooperate with INTERACTIVE in its defense or settlement of such claim at no expense to the STATE.
- 28.3 If INTERACTIVE determines that, as a result of such claim the right of users to use the State Digital Government Program is likely to be abridged, INTERACTIVE shall (a) take

all reasonable steps necessary to procure for the STATE the right to continue to use programming or operation; or (b) modify the Software (provided such modification will accomplish resumption of substantially all State Digital Government Program operations) so that no such abridgment will occur and correspondingly reduce charges if the modified State Digital Government Program is not substantially comparable to what it was before the modification. If (a) and (b) fail, then INTERACTIVE may discontinue such service without liability except where INTERACTIVE acted with gross negligence, willful misconduct or bad faith with respect to infringement and damages to the STATE resulted. If resumption of substantially all State Digital Government Program operations cannot be accomplished, the STATE may terminate the MEMORANDUM OF AGREEMENT for cause pursuant to Subparagraph 23.1.

29 LIABILITY.

- 29.1 The State of Alabama, its agents and employees shall not be legally responsible to INTERACTIVE for errors due to State Digital Government Program problems caused by INTERACTIVE.
- 29.2 INTERACTIVE agrees for itself, its agents, employees and assigns to indemnify, defend and hold harmless the State of Alabama , its agents and employees from any and all loss, damage or liability caused in whole or in part by INTERACTIVE's intentional acts, negligent acts or omissions, material failure to perform under the terms of the MEMORANDUM OF AGREEMENT, or violation of applicable laws, rules, regulations, or ordinances, except to the extent that the same was caused or induced by the State of Alabama or any agency.
- 29.3 INTERACTIVE agrees that it has no right of subrogation or contribution from the State of Alabama for any judgment rendered against INTERACTIVE or any claim settled by INTERACTIVE.
- 29.4 The STATE warrants through its representative's signature hereto that it has the legal authority to enter into this MEMORANDUM OF AGREEMENT with INTERACTIVE.

30 ASSIGNMENT AND SUBCONTRACTING.

- 30.1 INTERACTIVE may not assign any of its rights or delegate any of its duties hereunder unless done pursuant to express and prior written consent of the STATE.
- 30.2 INTERACTIVE may subcontract portions of work to be performed by it under the MEMORANDUM OF AGREEMENT with the express and prior written consent of the STATE. The STATE acknowledges and consents to the use of subcontracted services of affiliated NIC entities to assist in the performance of INTERACTIVE's duties hereunder, provided the fees for such services shall be reasonable and comparable to fees that would be paid to unaffiliated third parties for similar services and further provided that any State-approved subcontractors acknowledge and agree in writing to perform such services consistent with any applicable terms of this MEMORANDUM OF AGREEMENT,

including without limitation those provisions relating to State ownership and confidentiality of State records.

- 30.3 INTERACTIVE shall be fully responsible for all performance activities, compliance with the MEMORANDUM OF AGREEMENT, with user agreements and with all Agency Agreements and compliance with all federal, state, and local laws, including, but not limited to, any equal employment opportunity and affirmative action statutes and regulations, if applicable, for all subcontractors, if used.
- 31 COMPLIANCE WITH LAWS. INTERACTIVE agrees to comply with all applicable federal, state and local laws, rules, regulations, or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of the MEMORANDUM OF AGREEMENT shall be reviewed by the STATE and INTERACTIVE to determine whether the MEMORANDUM OF AGREEMENT requires a formal amendment.
- 32 NONDISCRIMINATION. INTERACTIVE and its subcontractors, if any, shall comply with the requirements of state and federal laws regarding nondiscrimination. Breach of this covenant may be regarded as a material breach of MEMORANDUM OF AGREEMENT.
- 33 CONFLICT OF INTEREST.
- 33.1 As used in this Paragraph 33:
- 33.1.1 "Immediate family" means the spouse and the unemancipated children of an individual.
- 33.1.2 "Interested party" means:
- 33.1.2.1 The individual executing this MEMORANDUM OF AGREEMENT;
- 33.1.2.2 An individual who has an interest of three percent (3%) or more of INTERACTIVE or INTERACTIVE's parent corporation; or
- 33.1.2.3 Any member of the immediate family of an individual specified under Subparagraph 33.1.2.1 or 33.1.2.2. The STATE may cancel the MEMORANDUM OF AGREEMENT without recourse by INTERACTIVE if any interested party is or becomes an employee of the STATE of Alabama.
- 33.2 The STATE will not exercise its right of cancellation under Subparagraph 33.1 if INTERACTIVE obtains and furnishes to the STATE an opinion by State Ethics Commission indicating that the existence of the MEMORANDUM OF AGREEMENT and the employment by the State of Alabama of the interested party does not violate any statute or code relating to ethical conduct of state employees. The STATE may take action, including cancellation of the MEMORANDUM OF AGREEMENT, consistent with an opinion of the State Ethics Commission obtained under this Subparagraph 33.2.

33.3 INTERACTIVE has an affirmative obligation under this MEMORANDUM OF AGREEMENT to disclose to the STATE (pursuant to Paragraph 14 above) when an interested party is or becomes an employee of the State of Alabama.

33.4 The obligation under this Paragraph 33 extends only to those facts that INTERACTIVE knows or reasonably could know.

34 SEVERABILITY. Should any provision of this MEMORANDUM OF AGREEMENT be found invalid, ineffective or unenforceable under present or future law, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

It is further agreed that if any provision of this MEMORANDUM OF AGREEMENT shall contravene any statute or constitutional provision or amendment, either now in effect or which may, during the course of this MEMORANDUM OF AGREEMENT, be enacted, then the conflicting provision shall be deemed null and void.

35 TAXES. The STATE and other State agencies are exempt from all federal, state, and local taxes. The STATE will not be responsible for any taxes levied on INTERACTIVE in performing under the MEMORANDUM OF AGREEMENT.

36 NO WAIVER OF BREACH. No waiver of a breach of any provision of the MEMORANDUM OF AGREEMENT shall constitute a waiver of any other breach, or of such provision. Failure of the STATE or INTERACTIVE to enforce, at any time, any provision of the MEMORANDUM OF AGREEMENT shall not be construed as a waiver thereof.

37 MAINTAINING A DRUG FREE-WORKPLACE

37.1 INTERACTIVE hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. INTERACTIVE will give written notice to the STATE within ten (10) days after receiving actual notice that an employee has been convicted of a criminal drug violation occurring in INTERACTIVE's or subcontractor's workplace.

37.2 False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the MEMORANDUM OF AGREEMENT, debarment of contracting opportunities with the STATE of Alabama for up to three (3) years, or any or all of the foregoing.

37.3 In addition to the provisions of the above paragraphs, if the total MEMORANDUM OF AGREEMENT amount set forth in the MEMORANDUM OF AGREEMENT is in excess of \$25,000.00, INTERACTIVE hereby further agrees that the MEMORANDUM OF AGREEMENT is expressly subject to the terms, conditions and representations of the following certification:

37.3.1 The INTERACTIVE certifies and agrees that it will provide a drug-free workplace by:

37.3.1.1 Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in INTERACTIVE's workplace

and specifying the actions that will be taken against employees for violations of such prohibition; and

- 37.3.1.2 Establishing a drug-free awareness program to inform their employees of (1) the dangers of drug abuse in the workplace; (2) INTERACTIVE's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.
- 37.3.1.3 Notifying all employees in the statement required by Subparagraph 37.3.1.1 above that as a condition of continued employment the employee will (1) abide by the terms of statement; and (2) notify INTERACTIVE of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- 37.3.1.4 Notifying in writing the STATE within ten (10) days after receiving notice from an employee under Subparagraph 37.3.1.3(2) above, or otherwise receiving actual notice of such conviction;
- 37.3.1.5 Within thirty (30) days after receiving notice under Subparagraph 37.3.1.3(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- 37.3.1.6 Making a good faith effort to maintain a drug-free workplace through the implementation of Subparagraphs 37.3.1.1 through 37.3.1.5 above.

- 38 NON-COLLUSION AFFIDAVIT. The undersigned attests subject to the penalties for perjury that he or she is the contracting party, or that he or she is the representative, agent, member or officer of the contracting party, that he or she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him, directly or indirectly, to the best of his or her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he or she has not received or paid, any sum of money or other consideration for the execution of the MEMORANDUM OF AGREEMENT other than that which appears upon the face of the MEMORANDUM OF AGREEMENT.
- 39 PENALTIES/INTEREST/ATTORNEY'S FEES. Each party will in good faith perform its required obligations hereunder and, does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Alabama law. Because of the unique nature of a self funding business model, the parties specifically agree that Liquidated Damages and Service Level Agreements shall not apply.

40 WARRANTIES.

40.1 INTERACTIVE warrants, represents and assures that during the entire term of the MEMORANDUM OF AGREEMENT, and any renewal period, that the State Digital Government Program, and INTERACTIVE's related management services thereof, shall generally comply with the requirements set forth in the ITB as well as the responses provided in INTERACTIVE's response and the requirements and performance standards mutually agreed to in writing in the individual Agency Agreements, subject to the oversight of the STATE.

40.2 INTERACTIVE further warrants, represents and assures that it will perform all of its management services to the STATE for the State Digital Government Program at all times in a diligent, competent, and workmanlike manner, in accordance with applicable laws and regulations and in a timely fashion consistent with its reasonable schedules and work plans.

41 GOVERNING LAW. This MEMORANDUM OF AGREEMENT shall be construed in accordance with and governed by the laws of the State of Alabama, and suit, if any, must be brought in the State of Alabama.

42 DISPUTE RESOLUTION.

42.1 It is the intent of the parties that any disputes that may arise between them be resolved as quickly as possible. Quick resolution may, in certain circumstances, involve immediate decisions made by the parties' duly authorized representatives. When such resolution is not possible, and depending upon the nature of the dispute, the parties hereto agree to resolve such disputes in accordance with the provisions of this Paragraph 42.

42.2 Any disputed issues concerning the MEMORANDUM OF AGREEMENT shall in all instances be initially referred to the parties' designated representatives identified in Paragraph 14 hereof. The parties' designated representatives shall use reasonable best efforts to render a mutually agreeable resolution of the disputed issue, in writing, within seventy-two (72) hours of such referral.

42.3 INTERACTIVE shall continue to perform pursuant to the MEMORANDUM OF AGREEMENT during any dispute resolution proceedings, subject to the provisions of the MEMORANDUM OF AGREEMENT.

42.4 INTERACTIVE'S sole remedy for the settlement of any and all monetary disputes rising hereunder shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama for disputes the settlement of which is within the statutory authority of the Board of Adjustment. For settlement of disputes not within the authority of the Board of Adjustment INTERACTIVE may pursue other legal remedies that may be available pursuant to state or federal law.

42.5 For any and all disputes arising under the terms of this MEMORANDUM OF AGREEMENT which are not resolved under this Section 42, the parties hereto agree, in

compliance with the recommendation of the Governor and Attorney General, when considering settlement of such disputes, to utilize an appropriate form of non-binding alternative dispute resolution as the parties may mutually agree including, but not limited to, mediation by and through the Attorney General's Office of Administrative Hearings or, where appropriate, private mediators.

43 INDEPENDENT CONTRACTOR.

INTERACTIVE is an independent contractor and neither INTERACTIVE nor any of its employees are entitled to benefits under the State of Alabama Merit System Law

44 COUNTERPARTS. This MEMORANDUM OF AGREEMENT may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

45 ENTIRE MEMORANDUM OF AGREEMENT. This MEMORANDUM OF AGREEMENT contains the sole and entire MEMORANDUM OF AGREEMENT between the parties, and supersedes any and all other agreements between them. The parties acknowledge and agree that none of them has made any representation with respect to the subject matter of this MEMORANDUM OF AGREEMENT or any representations inducing the execution and delivery hereof except such representations as are specifically set forth herein, and each party acknowledges that it has relied on its own judgment in entering into the MEMORANDUM OF AGREEMENT. The parties further acknowledge that any statements or representations that may have heretofore been made by either of them to the other are void and of no effect and that neither of them has relied thereon in connection with her or its dealings with the other.

46 SURVIVAL. The following provisions of this MEMORANDUM OF AGREEMENT shall survive the termination or conclusion of the MEMORANDUM OF AGREEMENT: Paragraphs 15, 24, 34, 42, 44 and 45 and Subparagraphs 11.7 and 23.3.

IN WITNESS WHEREOF, the parties having read and understood the foregoing sections of the MEMORANDUM OF AGREEMENT including all documents and exhibits incorporated therein by reference, expressly agree to these terms and conditions as evidenced by their respective dated signatures below:

The remainder of this page is left blank intentionally.

ALABAMA INTERACTIVE, INC.

Signature

Sloane Wright

Printed

General Manager

Title

3/1/2007

Date

ATTEST

Paul H. Butler

3-1-2007

Date

STATE OF ALABAMA)

COUNTY OF Montgomery) ss.

Sloane Wright, of lawful age, being first duly sworn, deposes and says that s/he is President of Alabama Interactive, Inc. and has been duly authorized to execute this MEMORANDUM OF AGREEMENT on its behalf.

Jara H Littleton

SUBSCRIBED AND SWORN before me this 1st day of March, 2007.

Jara H Littleton

Notary Public

My Commission expires:

June 16, 2007

DEPARTMENT OF FINANCE, INFORMATION SERVICES DIVISION:

By: 
Chief Information Officer

Jim Burns

Printed

Date: 3/19/07

ACCEPTED AND AGREED:

DEPARTMENT OF FINANCE:

By: 
Finance Director

James A. Main

Printed

Date: 3/19/07

DEPARTMENT OF FINANCE:

By: 
General Counsel for Finance

Richard H. Cater

Printed

Date: 3/16/07

EXHIBIT A

AI Online Application Inventory as of 09/01/2006

Agency	Service(s)
Accountancy, State Board of Public	License Renewal Firm Renewal
Architects, Alabama Board of	License Renewal
Bar, Alabama State	Membership Renewal
Banking Department	Renewal of Small-Loan License Renewal of Mini-Code License Renewal of Pawn Broker License Renewal of Mortgage License Renewal of Deferred Presentment License Multiple License Renewal
Chiropractic Examiners, Board of	Renewal of License Licensee Verification Initial Facility Permit Facility Permit Renewal
Coastal Birdfest	Merchant Services
Conservation and Natural Resources	Online Hunting and Fishing Licenses Hunting and Fishing Licenses/Point-of-Sale Probate Court Point of Sale Hunting and Fishing Licenses Oak Mountain Bow Hunt Registration Outdoor Alabama Subscription Becoming an Outdoors Woman Registration Hunt Outdoor Alabama Bartram Canoe Trail Reservation Marine Resources Point-of-Sale Alabama Store Phone Point-of-Sale Alligator Hunt
Education, Department of	Online Payments
Engineers and Land Surveyors, Board of	License Renewal
Environmental Management	Waste Water Operator License Renewal Smoke School Registration
Farmers Market Authority	Merchant Service
Speech Pathology and Audiology, Board of Examiners in	License Renewal
Finance, Office of the CIO	Alabama.gov Portal Alabama InTouch (Constituent Notification) ISD IT Strategic Planning Application
Motor Pool	Fleet Vehicle Reservation

Home Builders Licensure Board	Initial Application Download and Payment License Renewal Inactive License Renewal Expired License Renewal Expired Inactive License Renewal
Home Medical Equipment Board	License Renewal
Industrial Relations	Merchant Services, Unemployment Filing Workers Compensation CE Registration
Insurance	Merchant Services (several applications)
Interpreters and Translators, Board of	License Renewal
Mental Health and Mental Retardation	Case Manager Online Subscription
Nursing, Alabama Board of	RN License Renewal Reinstatement of a Nursing License License Verification and Disciplinary Status – Subscription Service Level 1 Level 2 Level 3 Level 4 Name and Address Change Duplicate License LPN Renewal Original Licensure by Examination Licensee Database Search and Download – Subscription Service Original Licensure by Endorsement License Verification for Individuals Deployed Nurse Pay Fee/Fine
Alabama Board of Pharmacy	License Renewal – Pharmacist License Renewal – Pharmacy Technician License Renewal – Pharmacy License Renewal – Mail-Order Pharmacy License Renewal – Institutional Pharmacy License Renewal - Oxygen Supplier License Renewal – Manufacturer/Wholesaler
Physical Therapy, Board of	License Renewal
Plumbers and Gas Fitters Board	Merchant Services
Public Health	Children's Health Insurance Program Payments Provider Service Facility Renewal EMS License Renewal
Public Safety	Electronic Access to Driver License Records
Public Service Commission	Supplemental Motor Carrier Authorization Annual Registration Application
Real Estate Appraisers Board	License Renewal
Real Estate Commission	Renewal of Real Estate Licenses Broker/Agent Certification Instructor License Renewal (Provider) Mailing Labels Continuing Education Management Continuing Education Course Renewal Change of Information Simple Transfers
Registration for Foresters, Board of	License Renewals
Revenue	Refund Status for Individual Income Tax

	Sales, Use and Lodging Tax Filings Personalized License Plate Reservation Local Government Tax Collections Report Income Tax Extension Application Trip and Fuel Permits Tax Estimations Certificates of Good Standing
Secretary of State	Merchant Services
Social Work Examiners, Board of	License Renewal

EXHIBIT B

Non-transferable Third Party Software as of 9/01/2006

Company	Service(s)
Google	Search appliance for portal
Live Person	Live Help for portal
Equifax Secure Global eBusiness CA-1	Site Security Certificate
Oracle Database Server (version 9i)	Database for applications & Financial Transactions
Resin	JAVA Application Server Software
TPS Systems, Inc.	2 Mainframe Gateway Software Licenses
2 Sun Servers (Hardware)	Used to access the DPS mainframe